IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATIONS Nos. 3196 of 1998 to 3217 of 1998, 4567 of 1998, 4992 of 1998, 5010 of 1998, 5421 of 1998 to 5423 of 1998, 5706 of 1998, 6278 of 1998, 6506 of 1998, 6565 of 1998, 6568 of 1998, 10119 of 1998, 10754 of 1998, 10757 of 1998, 1839 of 1999, 5679 of 1999 and 8558 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHARAT CO-OP BANK LTD

Versus

BANK OF BARODA

Appearance:
MR BS PATEL, MR BP TANNA, MR DF AMIN, MR BP DALAL, MR SA MEHTA for M/S.NANAVATI AND NANAVATI ADVOCATES for respective Petitioners
MR DARSHAN M. PARIKH for respondent Bank of Baroda.
MR DHARMESH V. SHAH for respondent Indian Bank.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 02/05/2000

COMMON ORAL JUDGEMENT

All these 39 Special Civil Applications filed against the Bank of Baroda (32) and Indian Bank (7) raise the controversy of common nature involving consideration of identical fact-situations and common questions of law

and, therefore, I propose to decide all these matters by this common judgment and order as under:

1. The petitioners herein are the Cooperative Societies or the Cooperative Banks either in Kheda District or Vadodara District. The petitioner Societies/ Banks decided to deposit the excess funds available with them with the Nationalised Banks to raise income of interest on such amount. It is the case of the petitioners that the Governing Bodies like the Board of Directors decided to invest the excess amounts with the Nationalised Banks by way of Fixed Deposit Receipts which were not to be prematurely encashed. In accordance with such decisions/resolutions taken by the petitioner Societies/Banks, the investments were made with different branches of the Bank of Baroda in Surat and in some cases, in Indian Bank. The petitioner Cooperative Societies/Banks when wanted to know their annual statement of accounts, they came to know that serious mischief had taken place with their accounts, their amounts had been misappropriated by fraudulent withdrawals in the form of loans or otherwise. By way of example, certain facts may be narrated herein from Special Civil Application No.8558 of 1999.

This petitioner-society had resolved on 29th January 1998 in the meeting of its Board of Directors to raise an amount of Rs.50,00,000/for a period of 366 days. In the same meeting, it was also resolved that no overdraft would be raised and also the deposit would not be prematurely encashed.

A cheque of Rs.50,00,000/- drawn on Madhavpura Mercantile Co-op. Bank, Surat was sent to the Bank of Baroda, Navyug College Branch, Surat for placing the amount in the Term Deposit for a period of 366 days with a covering letter dated 4.2.1998. Along with this letter, certain documents were also sent including the copy of the resolution dated 29th January 1998. The Branch of the respondent Bank at Surat, named above, was requested to forward to the petitioner, the extract of the Fixed Deposit account every three months. The Bank of Baroda issued FDR No. 529194 dated 6.2.1998.

By letter dated 25th June 1998, the petitioner Society requested the concerned branch of Bank of Baroda at Surat to forward the balance certificate of the Fixed Deposit account for the

accounting year. However, no reply was received.

The respondent no.2 Bank's branch at Surat, sent a letter dated 17th July 1998 to the petitioner informing it that against the duly discharged FDR No. 529194 dated 6.2.1998, amount to the extent of Rs.25,00,000/- was granted to the petitioner on 11th February 1998 and that the said FDR was prematurely paid on 2nd March 1998 in terms of the petitioner's request contained in letter dated 27th February 1998. It was further informed that after appropriating the loan amount of Rs.25,00,000/- and the interest thereon, the remaining amount of Rs.24,81,418/- was paid to the petitioner by three demand drafts.

The petitioner society has submitted that it was surprised and shocked to receive this letter dated 17th July 1998 as no loan was taken by pledging the FDR nor was a request made for premature withdrawal of the FDR by the Society.

The petitioner, therefore, sent a registered letter dated 27th July 1998 to the concerned branch of the Bank of Baroda at Surat, denying to have taken any loan or to have requested for premature withdrawal of the FDR and voicing an apprehension of scandal at the level of the Bank. It was also mentioned that the three demand drafts as stated to have been sent to it have not been received and requested to arrange for stop payment of these demand drafts. In this letter to the Bank, a request was also made to send the certified copy of the request letter from the petitioner for loan or premature encashment.

The petitioner then sent a notice dated 17th February 1999 to the concerned branch of the Bank of Baroda and received the reply dated 6th April 1999 from the respondent Bank reiterating the contents of its earlier letter dated 17th July 1998. This is how the petitioner came to know that some fraud had been perpetrated and that the same was being investigated by the CBI.

Yet another notice dated 28th June 1999 was sent to the respondent-Bank's branch at Surat in reply to the letter dated 6th April 1999 stating therein that three demand drafts had been seized by the Income Tax Officer (CIB), Surat, from one Smt. Jyotiben J. Karia of Surat and that

therefore, it was beyond doubt that these drafts representing the amount of Rs.24,18,417/- had not been encashed so far and also that by this time these drafts have become invalid. A request was, therefore, made that a sum of Rs.25,18,417/together with interest at the rate of 10.5% per annum from 6.2.1998 till the date of maturity, i.e. 7.2.1999 and further at the rate of 15% per annum from 8.2.1999 till remittance be paid as the amount had indisputably remained with the respondent Bank.

The respondent Bank gave its reply dated 7.10.1999 to the notice dated 29.6.1999.

2. It appears that in all these cases, in almost identical fact-situation according to the petitioners, a modus operandi was followed to withdraw the amounts invested by the petitioner Societies/Banks wholly or in part or by raising loans on that basis and according to the allegations of the petitioners, this was a criminal conspiracy and fraud in which the employees of the Banks, the concerned Branch Manager along with some other outsiders were involved and such conspiracy and fraud was carried to its logical end by replacing the cards containing the original signatures of the investors with other cards with forged or fake signatures which were made the basis for doing away with the invested money to the benefit of those who were neither investors nor depositors and this skillfully ill-designed task was accomplished by the officers and employees of the Bank acting in collusion with those parties which got the undue advantage and benefit of such amounts by playing fraud.

3. It is not in dispute that a sum of Rs.3 crores of the different petitioners, i.e. investors/depositors with the respondent Banks is involved in these matters and for that purpose, a CBI inquiry is being held in this regard in respect of both the respondent Banks, i.e. the different concerned branches at Surat, i.e. Bank of Baroda and Indian Bank.

4. Because of the denial of their payments the petitioners preferred these petitions before this Court seeking a direction against the respondent Banks to make the payments of their dues with interest at the agreed rates for the period in question and thereafter at the rate of 15% per annum. Thus, the petitioner Societies/ Banks have claimed the refund of their amount. These petitions were filed on different dates and the

proceedings drawn on Special Civil Application No. 8558 of 1999 show that the notice was issued on 29th October 1999, the same was made returnable on 30th November 1999 and in response to this notice, an affidavit-in-reply dated 14th December 1999 was filed on behalf of the Bank of Baroda through the Branch Manager of Navyug College Branch. The case of the petitioner is sought to be traversed through this reply and it has been stated that there are host of disputed questions of fact. The case of the petitioners has been controverted by saying that as against the petitioners claim that it has the original FDR and that they have not availed of any loan/ overdraft facility, the records of the respondent Bank show that the FDR was supplied and that subsequently it was pledged as security for the advance obtained against the security of the said FDR after following the due procedure. The contents of para 3 and 4 of this affidavit-in-reply are reproduced as under so as to put the case of the respondent in their own words:

"3. I submit that in the present case there are host of disputed question of facts. The petitioner contends that it has the original FDR and that they have not availed of any loan/ overdraft facility. As against that, the records of the respondent bank shows that the FDR was supplied and that subsequently, the FDR was pledged as security for the advance obtained against the security of the said FDR after following the due procedure. Subsequently, the FDR was prepaid and adjusted against the outstanding advance and the balance amount was paid to the petitioner by handing over three demand drafts to the agent of the petitioner. However the said demand drafts were not encashed. The said drafts were recovered by the Income Tax Department from the agent of the petitioner and are lying with the CBI. The amount of Rs.24,81,417/- which was the amount of the demand drafts issued for repaying the balance amount can, subject to the no objection from Income Tax department and the CBI, be paid to the petitioner through the Hon'ble Court. Various disputed questions of facts which arise in the case, can be properly determined only on the basis of evidence that would be adduced in a civil suit and that no such determination can be made in a writ petition. There are seriously disputed facts in the petition and it cannot be said that a prima facie case has been made out by the petitioner for grant of any interim relief, much

less a final relief. The petitioner alleges fraud against the respondent bank and some third party. As against that, the respondent bank submits that duly discharged fixed deposit receipt is pledged as security for the advance obtained against the security of the FDR and that all original documents including the FDR and the resolution of the petitioner with other relevant documents necessary for such purpose duly signed by the authorised signatory are available with the respondent bank. The respondent bank craves leave to refer to and rely upon such documents as and when necessary. Similar situation arose in case of Bank of Maharashtra vs. Race Shipping and Transport Company Private Limited and another reported in (1995) 3 SCC 257 wherein the Honourable Supreme Court upheld the contentions of the appellant bank against whom the High Court had passed an interim order directing repayment of money and directed repayment to the appellant bank. The ratio of the said judgment and similar other judgments clearly shows that the present petition is not tenable at law and the same is required to be rejected in limine. Apart from this the petition is only for recovery of money and such a petition which is raising disputed questions of facts and is not tenable at law under Article 226 of the Constitution of India as held by the Honourable Supreme Court and thus the present petition is not maintainable in law and is required to be rejected in limine. If any interim relief as prayed for or otherwise is granted, the same will have the effect of allowing the petition at this stage, without considering the disputed questions of facts raised by the respondent bank. This is not permissible under law and the Honourable Court may be pleased to refuse to grant any interim relief. Similarly if the petition is finally decided, then also the same will not give any proper opportunity to the respondent bank to prove its case and therefore no such relief can be granted even at the final stage and the Hon'ble Court be pleased to reject the petition in limine.

4. I further state that at present further investigations are going on and the preliminary investigations show that the petitioner through its agent deposited certain amounts by way of fixed deposit with the respondent bank. The

original FDR was collected by the said agent of the petitioner on behalf of the petitioner. However, as per the records of the respondent bank, subsequently, the said FDR, after due discharge at the back was sent by the petitioner, through its agent to the respondent bank and had requested the bank to permit loan limit, with a resolution of the board of the petitioner along with other necessary documents duly executed. The petitioner, on the basis of such documents, was permitted a loan facility against the security of fixed deposit receipt. Considering these facts, even if it is assumed for the sake of argument that some one has played a fraud either with the respondent bank or the petitioner, these questions will have to be investigated into by appropriate authority. The respondent bank has already informed the CBI about the same and the CBI is investigating into the question. In the meanwhile, the Income Tax Department was also investigating certain matters pertaining to these and other similar fixed deposits and pending the investigation, the income tax department had by a prohibitory order directed the respondent bank not to deal with the fixed deposit receipts or appropriate the funds. The respondent bank is not aware as to for what purpose the income tax department was investigating in the matter and now why they have, in some cases, lifted the prohibitory orders. Considering the aforesaid, it cannot be said that facts are admitted or that the respondent bank is acting arbitrarily or without authority of law. The petitioner is not entitled to any order in the present case. The petitioner has not disclosed the facts correctly and for that reason alone, the petition is required to be rejected in limine. The present petition for a mandamus is not tenable at law and the petitioner is required to be relegated to other alternative and more efficacious remedy which is available by way of a civil suit and the present petition is required to be rejected in limine. Apart from these facts in the present case, no issuance of writ of mandamus is called for and the petition is not tenable at law and is required to be rejected in limine."

5. On behalf of the Indian Bank also, an affidavit-in-reply dated 24th June 1998 has been filed through its Chief Manager in which, in para 3 a

contention has been taken that the FDRs of which the details have been given were not issued by the respondent Bank. Further details have been given in para 4, 5, 6 and 11 of this affidavit-in-reply.

6. In this group of petitions, the Rule was issued on 16th February 2000 by the Court and while issuing the Rule, the order to the following effect had been passed:

> "Rule. No interim relief at this stage. It will be open for the respondent bank to consider the matter at their highest level if it is felt that the amounts have not been paid to the petitioners and that there is fraud committed internally by the bank's employees for which the creditors should not be held responsible and to take appropriate decision for paying the amounts that may be found by it due as payable to the petitioners".

7. From the pleadings of the parties as are available in these matters and on which the reliance has been placed by the parties, it is very clear that there are disputed questions of fact involved in these cases and such disputed questions of fact cannot be gone into in these petitions. However, this Court finds that these are the cases in which the petitioner Societies/Banks who had invested the money of their members and account holders with the respondent Banks cannot be made to suffer and cannot be thrown to the onerous remedy as it appears from the facts of these cases that the petitioner Societies/Banks may have become the victims of the some fraud, scam or conspiracy and it appears that criminally master-minded modus operandi has been applied by some unscrupulous elements for their personal gain and undue benefit by fraudulent means to the disadvantage and prejudice of the real investors and depositors like the petitioners while it is the case of the respondent Banks that in certain cases, the petitioners themselves may be involved in such fraudulent transactions. This Court finds that at the time when the Rule was issued on 16th February 2000, this Court had passed an order that it will be open for the respondent Banks to consider the matter at their highest level and if it is found that the amounts have not been paid to the petitioners and any fraud had been committed internally by the Banks employees for which the creditors could not be made to suffer, appropriate decision may be taken by the Bank itself for paying the amounts that may be found by it to be due and payable to the petitioners.

8. On behalf of the petitioners, Mr.Parikh has pointed out today before this Court that the matter was considered by the Board of Directors of the respondent Bank of Baroda and it was decided that in case any undisputed amount or credit is lying, the same may be paid to such creditor at the interest of the Savings Bank Account.

9. Mr.Tanna, Mr.Amin, Mr.Dalal, Mr.S.A.Mehta, and Mr.Patel appearing for the petitioners have submitted that the respondent Banks have not taken the directions of this Court seriously. It has been urged that the respondents were under an obligation to examine each and every case on its own merits on the basis of the record available with them after calling the concerned petitioners and affording them an opportunity of hearing. In such cases, any general decision as has been taken was not intended and they should have decided each and every case on its own merits and on its own facts and in case any of the petitioners is able to satisfy the respondent Banks themselves that they had been victims of some fraud, they had not withdrawn any amount or had not taken any advanve out of any of the deposits made by them with the respondent Banks, the Banks could have taken a decision to return the due amount to such petitioners. Mr.Parikh appearing for the Bank of Baroda has submitted that so far as the petitioners who have come to this Court are concerned, in their cases, the total amount involved is about Rs.23 Crores and only about Rs.99 Lakhs is available with the respondent Bank of Baroda which is said to be an amount not in dispute and which can be paid to the depositors as per the amount due to their credit available with the Bank even now after the alleged fradulent withdrawals etc.

10. So far as the respondent Indian Bank is concerned, it is not pointed out by the learned Counsel as to whether any such exercise was taken up by the Indian Bank after this Court's order dated 16th February 2000 or not.

11. Having heard learned Counsel for both the sides, I do find that whereas no adjudicatory process as such on the disputed questions of fact can be taken up by this Court so as to give any definite finding as to how and in what manner the fraud, if any, had been perpetrated and how and exactly in what manner the conspiracy, was carried out to its logical end in this scam for the purpose of fraudulent withdrawals or loans out of the investments made by the depositors' money and in fact what exact modus operandi was followed in these cases and

it may be a subject matter of investigation and inquiry by the CBI and it may also be open for the concerned Banks to hold proceedings in this regard vis-a-vis their own employees if they so choose in search of the truth, I find that there are certain provisions in the Banking Companies (Acquisition etc.) Act, 1970 as also in the Banking Regulation Act, 1949 which may be taken as guiding principles for issuing certain directions by this Court. Under Section 35A of the Banking Regulation Act, 1949, the Reserve Bank of India has been given the power to issue specific directions in the interest of banking policy in public interest, to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking company. Similarly under Section 36 further powers and functions of the Reserve Bank of India have been enumerated and according to Section 36B(iv), it may appoint one or more officers to observe the manner in which the affairs of the banking company or its officers or branches are being conducted and make a report thereon.

12. In the facts and circumstances of these cases, it is very clear that the manner in which the large deposits to the tune of crores of Rupees made by the depositors have been dealt with by the concerned branches of the Banks cannot be said to be in consonance with the banking policy and the same appears to have been conducted in a manner detrimental to the interest of the depositors rather causing prejudice to the interest of the banking company itself. Such scandals in which the allegations are there against the employees and officers of the Bank itself, go a long way to tarnish the reputation and image of the banking company itself and it will not be in the interest of such banking companies apart from being inconsistent with the banking policy and once such scandals are observed in by series of facts in number of cases in a particular period of time with regard to particular parties, they have to be subjected to a thorough probe by the persons who have expertise in this regard so that the accountability and liability is fixed and if it is found that any depositor has been deprived of his money in a deceitful manner, such creditor/depositor may be remedied accordingly. It is known to all and sundry that in such cases, the investigations for fixing the criminal liability and the criminal cases may take a long time and the bonafide investors and depositors can be made to suffer or wait till the results of such criminal cases reach the logical end, more particularly when not an individual but large number of persons who are members of the Cooperative

Societies or the Cooperative Banks which have their own membership are concerned it goes without saying that the money which has been invested or deposited by such Societies or Banks belongs to large number of members and this money which was collected from the members and was lying in the said Banks or Societies so invested and deposited with the respondent Banks treating such Banks to be Nationalised Banks and with the expectation that on the excess money, the petitioner Societies/Banks will be earning more amount of interest so as to add to the assets and the income of such Societies/Banks. It is a dismal fact that the faith and belief with which the amounts had been invested by the petitioners has met this unfortunate fate resulting in the deprivation of the principal money itself rather than earning any money thereon. Such an injury has to be taken care of. Since I find that the order which was passed by this Court on 16th February 2000 has not been taken in right earnest and the purpose with which the order has not been served been passed and whereas it had been expressed on behalf of the petitioners that the respondent Banks may not be quite objective in considering the petitioners' grievances in the correct perspective because of the pressure of the employees or Union thereof in deciding as to who had played the actual role in the fraud and so far as these matters are concerned, the petitioners as well as the respondent Banks are the witnesses, while the petitioners are the real sufferers, the respondent Banks have suffered the loss of their reputation and image, but no financial loss. The actual financial loss is suffered by the petitioners and therefore, if any inquiry is to be held by the respondent Banks themselves, they will be prosecuting their own cause and the whole truth may not come out. In such a fact-situation, I find that all these Special Civil Applications can be disposed of by giving the following directions:

I. A Committee is hereby constituted as under:-

i) The Deputy Governor of the Reserve Bank of India himself or his nominee as the Chairman of the Committee.

ii) One member to be nominated by the Deputy Governor of the Reserve Bank of India who shall be the officer of the highest rank in the Reserve Bank of India but subordinate to Dy.Governor.

iii) One Member from the Bank of Baroda/Indian Bank to be appointed by the Board of

Directors of the concerned Bank preferably a Chief General Manager or an officer not below the rank of General Manager.

II. The member from Bank of Baroda would participate in the meting of this Committee only when the cases relating to the Bank of Baroda are taken up and the member from the Indian Bank shall participate in the meeting of the Committee only when the cases relating to Indian Bank are taken up.

III. The Committee may evolve and follow its own procedure and will also have the power to examine summon or examine the witnesses.

IV. This Committee shall examine each and every case on its own merits with reference to the records desired to be made available and will give its findings with regard to the amount due and payable to the concerned petitioners/parties and the rate of interest. The Bank of Baroda and Indian Bank shall inform the Committee in writing about the undisputed amount with full details. This Committee shall also go into the question of the rate of interest payable in case of the undisputed amount which is directed to be paid under this order. It will be also be open for the Committee to opine as to who were the officers/employees/party responsible for this conspiracy and fraud.

V. The findings as may be given by the Committee shall be binding on both the sides and shall be implemented forthwith.

VI. The petitioners/parties on receipt of any amount as a result of the findings of the Committee as aforesaid, shall also give an undertaking to the concerned Bank before the amount is withdrawn, that in case as a result of CBI inquiry, it is found and held by the concerned Court after the trial that any amount had been withdrawn by any such party, as a part of the aforesaid conspiracy, etc. they will return such amount to the concerned Bank.

VII. The Committee shall decide all these cases within a period of three months from the date the certified copy of this order is produced before

the Dy.Governor of the Reserve Bank of India.

VIII. It will be open for the petitioners/parties to agitate their grievances, if any, against the orders which may be passed as a result of the findings of the Committee constituted under this Court's order as aforesaid.

IX. These directions are in addition to and not in derogation of any legal remedy which any party may seek after the report of this Committee.

X. For the time being, the concerned Banks, i.e. Bank of Baroda/Indian Bank shall disburse the undisputed amount, if any, with interest at the rate of Savings Bank Account to the respective petitioners/parties within 15 days from the date the copy of this order is produced before the concerned Bank. The payment shall be made through Demand Drafts in the name of the petitioner Societies/Banks/ depositors. However, if the Committee decides any rate of interest higher than the Savings Bank Account, the consequences shall follow.

13. With the observations and directions as aforesaid, all these 39 Special Civil Applications are partly allowed and the Rule is made absolute in the terms as aforesaid. No order as to costs. Direct service is permitted.

(M.R. Calla, J.)

******

Sreeram.